YONG MONG YUNG (f) v. CHAI SHONG

[O.C.J. (Williams J.C.) (June 22, 1964]

[Kuching — Matrimonial Case No. K 10 of 1964]

Husband and wife — Divorce — Hakah Custom — Cruelty.

In this case the petitioner sought divorce from her husband on the grounds of cruelty. The parties were married according to Chinese (Hakah custom). Evidence was given that there is no custom governing divorce among the Hakah community, the modern practice being to leave it to the courts.

Held: the petitioner had not established cruelty as understood in the usual legal sense of the word and therefore the petition must be refused.

Mere incompatibility between husband and wife (in the sense that there were frequent quarrels between them) does not amount to cruelty at law.

PETITION FOR DIVORCE.

Parties in person.

Williams J.C.: In this case the petitioner is seeking a divorce from her husband on the ground of cruelty. The parties were married according to Chinese (Hakah) custom in February 1952 and there are four children of the marriage.

The petitioner called a Mr. Lee Chuak Moy to give evidence as to Hakah custom governing divorce. Mr. Lee was very co-operative and did his best to enlighten the court on what that custom might be. The total effect of his evidence however was to establish that there is no custom governing divorce amongst his community, the modern practice being "to leave it to the courts".

I am not quite sure what was meant by this but I proceeded to take evidence with a view to seeing whether it established 'cruelty' as understood in the normal legal sense of that word. Having heard the parties I am quite satisfied that this is not a case of cruelty but only of incompatibility.

The wife described a married life of interminable quarrels but only instanced two attempts at violence upon her. She also referred to some threat by the husband whilst in a fit of rage to commit suicide. There was however no corroborative evidence of any of these matters.

The husband simply denied the allegations made. He could however offer no explanation of any value as to why his wife should wish to leave him.

I am quite satisfied that the fault lies in the personalities of the two parties. The husband is a dour and stubborn man albeit a steady worker and fond father. The wife is also a person of strong character and is determined to make an income for herself independently of that of her husband. Indeed it is this urge for independence that is the root of the trouble here.

Thus I am satisfied that there have been frequent quarrels between these parties. That however as indicated is not cruelty. Further although there may possibly have been some blows exchanged during the quarrels there is nothing which would indicate that they were in any way severe; indeed the wife's evidence on this matter was most vague and unpersuasive. I also note that it was a demand for a share of the money that she obtained from the sale of some pigs which triggered off the final break and not any violence.

It is in these circumstances that I refuse the petition asked for.

There were also applications for custody of the children by both parties. However in as much as such applications were based upon the granting of a divorce I make no order upon that matter.

I would however state that should this court ever have to deal with the question of the custody of these unfortunte children it will be guided by their needs and well-being above all else.

I make no order as to costs.

Petition dismissed.